



# Department for Communities and Local Government

Mr Matthew Turnbull  
Turley  
33 Park Place  
LEEDS  
LS1 2RY

Our Ref: APP/N2535/W/15/3010086

8 March 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY EDP  
LAND WEST OF MOOR LANE, CAISTOR, LINCOLNSHIRE  
APPLICATION REFERENCE 130876**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul K Jackson B Arch (Hons) RIBA, who made a site visit on 3 November and completed on 16 November 2015, into your client's appeal against the decision of West Lindsey District Council (the Council) to refuse planning permission for the erection of a single wind turbine with a maximum height to blade tip of 102 metres above ground level together with associated ancillary infrastructure: access tracks, crane pad, sub-station building, underground cabling and temporary construction compound at land west of Moor Lane, Caistor, Lincolnshire, in accordance with application reference 130876 dated 17 January 2014.
2. On 14 October 2015 the appeal was recovered for the Secretary of State's determination in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommends that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation, dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Correspondence submitted after the site visit**

4. The Secretary of State received a letter from John V Yelland MA DPhil (Oxon) MinstP FIET AMASA MIOA dated 4 December 2015 concerning noise. The Secretary of State has carefully considered this letter, but is satisfied that it does not contain any evidence which might have affected his overall decision. Copies of the letter may be obtained by written request to the address on the bottom of the first page of this letter.

**Policy and Statutory Considerations**

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be

Department for Communities and Local Government  
Jean Nowak, Decision Officer  
Planning Casework  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

Tel: 0303 444 1626  
Email: [PCC@communities.gsi.gov.uk](mailto:PCC@communities.gsi.gov.uk)

determined in accordance with the development plan unless material considerations indicate otherwise.

6. In this case the development plan consists of the saved policies of the West Lindsey Local Plan (First Review) 2006 (LP) (IR4). The Secretary of State considers that the LP policies of most relevance to this appeal are those identified by the Inspector at IR5-8. He also agrees with the Inspector that very limited weight can be attached to the anticipated replacement Central Lincolnshire Local Development Scheme at this stage.
7. Other material considerations which the Secretary of State has taken into account include the non-statutory Lincolnshire Wolds Area of Outstanding Natural Beauty (AONB) Management Plan (LWMP), the National Planning Policy Framework 2012 (the framework); the planning practice guidance first published in March 2014 (the guidance) and ETSU-R-97 (The assessment and Rating of Noise from Wind Farms). He has also had regard to the Written Ministerial Statement of 18 June 2015, which set out new considerations to be applied to proposed wind energy development so that local people have the final say on wind farm applications.
8. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess. Furthermore, as required by section 72(1) of the LBCA Act, the Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

### **Main Issues**

9. The Secretary of State considers that the main issues in this case are those identified by the Inspector at IR74.

#### **Policy considerations**

10. The Secretary of State notes (IR75) that the saved policies of the LP are silent on renewable energy and, having carefully considered the Inspector's comments at IR76-77, he agrees with the Inspector's conclusion at IR78 that, where the development plan is absent, silent or the relevant policies are out of date, paragraph 14 of the Framework is engaged so that planning permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

#### **The effect on the Caistor Conservation Area**

11. The Secretary of State has had regard to the Inspector's remarks at IR80-82 and agrees with his conclusions that the turbine would appreciably harm the setting and therefore the significance of the conservation area, conflicting with the aims of policy STRAT 1 of the LP. He shares the Inspector's view (IR82) that the harm would be less than substantial in terms of the Framework. However, he takes the view that it does not follow that if the harm to heritage assets is found to be less than substantial, then the subsequent balancing exercise undertaken by the decision taker should ignore the overarching statutory duty imposed by the LBCA Act. He therefore sees a need to give considerable weight to the desirability of preserving the settings of all listed buildings and conservation areas and, accordingly, he gives significant weight to this statutory duty in the overall planning balance.

#### **Other heritage assets**

12. The Secretary of State agrees with the Inspector in respect of the scheme's impact on the Grade I St Peter and St Paul Church in Caistor that its historic and architectural significance as the focus of the community would be detrimentally affected because of

the competing vertical presence of the turbine within its setting (IR83), and he attaches significant weight to that. However, he also agrees with the Inspector (IR84-85) that the proposed turbine would not significantly affect the heritage significance of Pelham's Pillar or Brocklesby Registered Park and Garden and would not affect appreciation of the Caistor Roman Town Scheduled Ancient Monument. The Secretary of State therefore attaches limited weight to the impact on these heritage assets and also agrees with the Inspector (IR86) that no other heritage assets would be significantly affected by the proposed development.

#### The effect on the Lincolnshire Wolds AONB and visual amenity

13. For the reasons given at IR87-89, the Secretary of State agrees with the Inspector that the proposed turbine would be a significant distraction from the natural beauty of the AONB and would conflict with the aim of conserving its landscape and scenic beauty. He also agrees with the Inspector (IR90) that the proposed development would be a high, prominent and distracting object that would interfere with appreciation of the landscape quality of the Wolds Scarp; and that appreciation of the natural beauty of the AONB as seen from North Kelsey and areas west of the site, as well as from within the AONB itself, would be seriously affected by the intervening height and movement of the turbine (IR91). Overall, the Secretary of State agrees with the Inspector's conclusion at IR91 that the sensitivity of the local landscape is greater than that recorded in the appellant's Landscape and Visual Impact Assessment and that the magnitude of effect is locally greater, leading to a more than moderate significance of effect. He therefore also agrees with the Inspector's overall conclusion that there is conflict with the aims of LP policy NBE 9, policy PP7 of the LWMP and the objectives of the Framework, to which he attaches substantial weight.

#### Residential amenity

14. For the reasons given at IR92-94, the Secretary of State agrees with the Inspector's conclusions with respect to the three residential properties visited that the outlook of the occupiers would not be unacceptably affected and so he gives this matter no weight.

#### Noise, health and other impacts

15. Having noted the appellant's confirmation that the nearest noise sensitive receptor is occupied by a financially involved person who might be expected to tolerate a higher level of noise (IR95), the Secretary of State agrees with the Inspector that a condition ensuring an upper daytime limit of 35 LA90 (10 mins) would be met at an uninvolved property would provide sufficient assurance that noise levels would be acceptable. He therefore gives this matter no weight.
16. For the reasons given at IR96-97, the Secretary of State also agrees with the Inspector in respect of other potential impacts and gives them no weight.

#### Overall balance and conclusions

17. The Secretary of State agrees with the Inspector (IR98) that the production of electricity, sufficient to provide power for up to 600 households, along with the reduction of CO<sub>2</sub> that would result, is a very significant factor in favour and he gives that substantial weight. However, weighing against this, the Secretary of State agrees with the Inspector (IR98) that there would be a significant adverse impact on landscape character and visual amenity in views from and towards the AONB and for users of the Viking Way. The Secretary of State also gives significant weight to the less than substantial degree of harm to the setting of Caistor Conservation Area and the Grade I listed St Peter and St Paul Church. The Secretary of State has taken into account the 25 year life of the scheme, but he agrees with the Inspector that the adverse impact would last for more

than a generation in a sensitive landscape area and he therefore attaches significant weight to this.

18. Overall, the Secretary of State agrees with the Inspector (IR99) that the benefits are significantly and demonstrably outweighed by the disadvantages. He agrees with the Inspector that the proposed development would not accord with the relevant aims of LP policies STRAT 1 and NBE 9; policy PP7 of the LWMP or the corresponding up to date objectives of the Framework and planning guidance with regard to visual amenity. He attaches substantial weight to that and significant weight to the impact on heritage assets. The Secretary of State has also taken account of the fact that the Council and the overwhelming majority of local people who have made their opinions known are not satisfied that the planning impacts have been fully addressed (IR99). He agrees with the Inspector that, having regard to the Written Ministerial Statement of 18 June 2015, it cannot therefore be assumed that the proposed wind turbine has their backing. Therefore, while the Secretary of State considers that the proposal would deliver a benefit in respect of the delivery of renewable and low carbon energy, he does not consider that this amounts to a material consideration of sufficient weight to justify him determining the appeal other than in accordance with the development plan.

### **Conditions**

19. The Secretary of State has had regard to the Inspector's comments on conditions at IR70-73, the suggested conditions annexed to the IR, paragraph 206 of the Framework and the guidance. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework. However, he does not consider that the suggested conditions would overcome his reasons for dismissing the appeal.

### **Formal Decision**

20. Accordingly, for the reasons given above the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of a single wind turbine with a maximum height to blade tip of 102 metres above ground level together with associated ancillary infrastructure: access tracks, crane pad, sub-station building, underground cabling and temporary construction compound at land west of Moor Lane, Caistor, Lincolnshire, in accordance with application reference 130876 dated 17 January 2014.

### **Right to challenge the decision**

21. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
22. A copy of this letter has been sent to West Lindsey District Council. A letter of notification has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

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# **Report to the Secretary of State for Communities and Local Government**

**by Paul K Jackson B Arch (Hons) RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date: 8 January 2016**

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**Town and Country Planning Act 1990**

**West Lindsey District Council**

**Appeal by EDP**

Site visit made on 3 and 16 November 2015

Land west of Moor Lane, Caistor, Lincolnshire

File Ref: APP/N2535/W/15/3010086

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**File Ref: APP/N2535/W/15/3010086**

**Land west of Moor Lane, Caistor, Lincolnshire**

- The application was recovered for decision by the Secretary of State by a direction, made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 14 October 2015.
- The appeal is made by EDP against the decision of West Lindsey District Council.
- The application Ref 130876, dated 17 January 2014, was refused by notice dated 8 October 2014.
- The development proposed is erection of single wind turbine with a maximum height to blade tip of 102 metres (agl) together with associated ancillary infrastructure: access tracks, crane pad, sub-station building, underground cabling and temporary construction compound.

**Summary of Recommendation: That the appeal is dismissed.**

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**Procedural Matters**

1. Due to persistent fog on 3 November 2015, the site visit could not be completed. With the agreement of the parties, a further unaccompanied site visit took place on 16 November 2015. This included parts of the Viking Way and Nettleton Top.
2. On the 18th June 2015 the Secretary of State for Communities and Local Government issued a Written Ministerial Statement (WMS) entitled 'Local Planning' detailing new considerations to be applied to proposed wind energy development. The considerations were to take effect from 18th June 2015. The parties were requested to submit their responses to the WMS and I have taken them into account.

**The Site and Surroundings**

3. The proposed site of the turbine would be on agricultural land forming part of Caistor Moor Farm north west of Caistor. The site comprises an agricultural field 0.6 hectare in size and is bordered by adjoining fields. Immediately to the south is a duck farm comprising 24 sheds in 2 rows with associated buildings. Caistor equestrian centre is located approximately 460 metres to the north east. The closest dwelling to the site is Caistor Moor Farm house which is located near to the equestrian centre. South view cottage is located to the front of the duck farm and is approximately 650 metres to the south. The development would be visible from other dwellings in Moor Lane, Caistor Road, North Kelsey Road and parts of Caistor; and from rising land to the south east, east and north east, that to the east and south east being within the Lincolnshire Wolds Area of Outstanding Natural Beauty (AONB). Caistor itself lies on the northern edge of the AONB on a west facing slope. A National Trail, the Viking Way, passes through the centre of Caistor<sup>1</sup>.

**Planning Policy**

4. For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, the adopted development plan comprises saved policies of the West Lindsey Local Plan (First Review) 2006 (LP). Work is underway on the anticipated replacement Central Lincolnshire Local Development Scheme. Very

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<sup>1</sup> See site location plan for the Viking Way ref N235-GR-PA1-001A. Viewpoints are added on N235-GR-LVIA1-002

limited weight can be attached to the replacement development plan at this stage.

5. LP policies referred to in the reasons for refusal are STRAT 1 and NBE 9. STRAT 1 is described as a keynote policy against which all development proposals requiring planning permission will be assessed. It says that all development must take full account of the need to protect the environment so that present demands do not compromise the ability of future generations to meet their own needs and enjoy a high quality environment. Development must reflect the need to safeguard and improve the quality of life of residents, conserve energy resources, protect the Plan area's character and be satisfactory with regard to a number of factors including:
  - *The impact on the character, appearance and amenities of neighbouring, and where relevant, other land, including visual encroachment into the countryside;*
  - *The impact on the character, appearance and setting of historic assets including Conservation Areas, Listed Buildings, Scheduled Ancient Monuments and Historic Parks and Gardens;*
  - *The impact of the proposal on neighbouring and, where relevant, other uses;*
  - *The availability and capacity of infrastructure and social/community facilities to adequately serve the development; and*
  - *The retention and safeguarding of existing trees, woodlands and hedgerows where feasible and the incorporation of landscape measures and/or the utilisation of natural screening in order to maintain the ecological value of the site and the wider environment.*
6. The last sentence of the policy says: '*Where in sensitive locations new development will have an impact on the character of the area by virtue of its location or scale, planning permission will not be granted unless detailed plans are submitted with the planning application*'. The accompanying text then says '*When considering development proposals the Council must have adequate information to enable them to be judged against the policies in the plan. In many locations in the District which are sensitive to new developments, simple outline applications do not give sufficient detail to allow a complete consideration of the application. These sensitive locations and situations include:*
  - *Applications in a Conservation Area; the Lincolnshire Wolds AONB; or in an Area of Great Landscape Value*
7. The last paragraph of the justification of STRAT 1 says '*Where it appears that a new development will result in a loss in the quality of the environment, information must be provided with the application to indicate what measures will be taken to mitigate that loss. The information should also indicate how these measures can be delivered and how a net gain from the development can be obtained. All development proposals should positively contribute to the enhancement of local distinctiveness and sense of place*'.- 8. Policy NBE 9 concerns the AONB and indicates that:



*'Major development will not be permitted save in exceptional cases. To be permitted, major development proposals must be able to demonstrate that:*

- i. There is identified need in terms of national considerations;*
- ii. Benefits will outweigh harm, in terms of impact on the local economy and the cost of developing elsewhere, or meeting national need in some other way, is not viable;*
- iii. Detrimental effects on the landscape and the environment can be satisfactorily mitigated.*

*Small scale development intended to meet the economic or social needs of a local community may be permitted provided that it does not harm the character or appearance of the AONB or impact upon the ability of others to enjoy the area's uniqueness. Facilities for quiet enjoyment and appreciation of the area may also be permitted where they do not harm the special character of appearance of the AONB.*

*Where development is permitted, measures will be taken to mitigate its impact upon the special character and appearance of the AONB, including upon the skyline and ridgeline of the natural landscape.'*

9. The application site does not lie within the AONB, but would be within 2.5km at Nettleton and within 3km at Caistor on the A1173. The proposed turbine would be visible from much of the north west scarp of the AONB which includes a prominent hill, Nettleton Top<sup>2</sup>.
10. The Lincolnshire Wolds AONB Management Plan (LWMP) notes that wind energy is seen as both a threat and an opportunity; policy PP7 seeks to ensure a general presumption against wind energy schemes in any location which could cause significant and demonstrably detrimental effects upon the natural beauty and intrinsic characteristics of the AONB.
11. Turning to national policy, the National Planning Policy Framework (NPPF) says at paragraph 98 that applicants for energy development should not have to demonstrate the overall need for renewable or low carbon energy. Applications should be approved<sup>3</sup> if their impacts are (or can be made) acceptable. The NPPF advises that decision makers should follow the approach set out in the National Policy Statement (NPS) for Renewable Energy Infrastructure (EN-3), read with the Overarching NPS for Energy (EN-1), both dated 2011.
12. The advice needs to be read as a whole. Particularly relevant to this case is section 5.8 of EN-1 which concerns the historic environment. Paragraph 5.8.18 says that when considering applications for development affecting the setting of a designated heritage asset, the IPC (or the decision maker) should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the decision maker should weigh any negative effects against the wider benefits of the application. The greater the

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<sup>2</sup> Refer to N235-GR-LVIA1-007

<sup>3</sup> Unless material considerations indicate otherwise

- negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.
13. Paragraph 5.9.18 advises that all proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites and that a judgement has to be made on whether the visual effects on sensitive receptors, such as local residents and visitors to the area, outweigh the benefits of the project. EN-3 states at paragraph 2.7.6 that appropriate distances should be maintained between wind turbines and sensitive receptors to protect amenity, the two main impact issues being visual amenity and noise. Paragraphs 2.7.48/49 say that commercial wind farms are large structures and that there will always be significant landscape and visual effects for a number of kilometres around a site; the arrangement of turbines should be carefully designed to minimise effects on the landscape and visual amenity whilst meeting technical and operational siting requirements and other constraints.
  14. The NPPF has a number of core principles at paragraph 17. One of these specifically supports the transition to a low carbon future in a changing climate and encourages the use of renewable resources (for example, by the development of renewable energy). Another core principle says that a good standard of amenity should always be sought for existing and future occupants of buildings and that planning should take account of the different roles and character of different areas.....recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it. Another says that planning should also conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.
  15. The NPPF defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset; may affect the ability to appreciate that significance; or, may be neutral. English Heritage (now Historic England) (HE) guidance indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset. The NPPF says that the significance of an asset is defined as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.
  16. Heritage significance can be harmed through development within setting. Substantial harm to the significance of a Grade II listed building should be exceptional. Substantial harm to the significance of designated heritage assets of the highest significance (including SAMs, Grade I and II\* listed buildings) should be wholly exceptional. Paragraph 133 of the NPPF says that if development would cause substantial harm to significance, then planning permission should not be granted unless it can be demonstrated that an exception is warranted; an exception would be justified if the substantial harm is necessary to achieve substantial public benefits that would outweigh the harm. If the development would cause less than substantial harm, this harm should be weighed against the public benefits of the proposal.

17. The Planning Guidance of March 2014 (PPG) advises in the section on renewable and low carbon energy that:

- the need for renewable or low carbon energy does not automatically override environmental protections;
- cumulative impacts require particular attention, especially the increasing impact that wind turbines and large scale solar farms can have on landscape and local amenity as the number of turbines and solar arrays in an area increases;
- local topography is an important factor in assessing whether wind turbines and large scale solar farms could have a damaging effect on landscape and recognise that the impact can be as great in predominately flat landscapes as in hilly or mountainous areas;
- great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting;
- proposals in National Parks and Areas of Outstanding Natural Beauty, and in areas close to them where there could be an adverse impact on the protected area, will need careful consideration;
- protecting local amenity is an important consideration which should be given proper weight in planning decisions

18. The PPG also provides advice on conserving and enhancing the historic environment, saying that heritage assets are an irreplaceable resource and effective conservation delivers wider social, cultural, economic and environmental benefits. In assessing whether 'substantial harm' in the terms of the NPPF is likely to occur, it says: *'What matters in assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset. As the NPPF makes clear, significance derives not only from a heritage asset's physical presence, but also from its setting. Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the NPPF. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting. While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm.'*

19. Under the section 'How can proposals avoid or minimise harm to the significance of a heritage asset?' the guidance says *'A clear understanding of the significance of a heritage asset and its setting is necessary to develop proposals which avoid*

*or minimise harm. Early appraisals, a conservation plan or targeted specialist investigation can help to identify constraints and opportunities arising from the asset at an early stage. Such studies can reveal alternative development options, for example more sensitive designs or different orientations, that will deliver public benefits in a more sustainable and appropriate way'.*

20. The most recent advice in the PPG<sup>4</sup> with regard to how heritage should be taken into account in assessing wind turbine applications is: *'As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of wind turbines on such assets. Depending on their scale, design and prominence a wind turbine within the setting of a heritage asset may cause substantial harm to the significance of the asset.'*
21. In accordance with the statutory duty set out in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), special regard must be paid to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess. The preservation of setting is to be treated as a desired or sought-after objective, and considerable importance and weight attaches to the desirability of preserving the setting of listed buildings when weighing this factor in the balance. In this respect I have had regard to the Heritage Assessment submitted by the appellant and third party submissions.
22. As required by section 72(1) of the LBCA, special attention must also be given, with respect to any buildings or other land in a conservation area, to the desirability of preserving or enhancing the character or appearance of that area. The appeal site is not within any CA but the proposed turbines would be visible from and around the nearest CA in Caistor and forms part of its setting. Paragraph 132 of the NPPF indicates that significance can be harmed or lost through alteration or destruction of a heritage asset or development within its setting.
23. To conclude on national advice, following a Written Ministerial Statement (WMS) on 18 June 2015, the PPG now advises that it is quite clear that when considering applications for wind energy development, local planning authorities should (subject to a transitional arrangement<sup>5</sup>) only grant planning permission if:
  - The development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan; and
  - Following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.
24. The WMS goes on to say that whether the proposal has the backing of the affected local community is a planning judgement for the local planning authority. The Secretary of State attaches substantial weight to the WMS.

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<sup>4</sup> 6 March 2014

<sup>5</sup> When a valid application has been made and the development plan does not identify suitable sites, the PPG indicates that the Council can find the proposal acceptable if, following consultation, it is satisfied it has fully addressed the planning impacts identified by local communities and therefore has their backing

## **The Proposal**

25. The proposal is for a triple blade horizontal axis wind turbine, the hub height of which would be 75 metres (m) above ground level mounted on a monopole tower. Each blade would be 27m long (radius from the hub) thereby giving a total height of the structure of 102m above ground level when a blade is in the vertical position above the hub. A substation with associated cabling and a temporary access track including construction compound form part of the scheme. The turbine would have a maximum installed capacity of 800kW. The electricity generated by the wind turbine would be fed into the national grid via an underground connection to the nearest existing 11kV overhead line.

## **The Case for EDP**

*The main points are:*

26. As set out in the NPPF, where a Development Plan is silent, the presumption in favour of development, as set out in paragraph 14, is activated. In this case the development plan is materially out of date and does not have any saved policies relating to renewable energy. The emerging plan is not far enough advanced to have any weight in the decision making process. It is therefore necessary to consider whether the effects of the proposal significantly and demonstrably outweigh the benefits having regard to the provisions of the NPPF.
27. There would be no harm to the significance of heritage assets including Caistor Conservation Area. The proposed development is consistent with the objectives of S66(1) and S72(1) of the LBCA, saved LP policies and the NPPF. There would be no harm to aviation infrastructure or activities subject to implementation of mitigation that can be secured by planning condition. There would be a negligible impact on protected and/or important habitats and species. There would be a slight to moderate effect on landscape character within 10 kilometres (km) of the site. This effect would not be significant and, as for any commercial wind turbine proposal, is not unusual or out of the ordinary; it is to be expected. The effects to landscape character would be temporary and reversible upon decommissioning.
28. The visual effects of the proposed development would be moderate/slight adverse and not significant, to a distance of up to 6.5km. These would reduce to slight and none beyond 6.5km. These effects would not be significant and, as for any commercial scale wind turbine proposal, are not unusual or out of the ordinary and are to be expected. The visual effects would be temporary and reversible upon decommissioning. Only 2% of the Lincolnshire Wolds would potentially have views towards the turbine. No vantage points on the Viking Way have been identified as being of concern.
29. The nearest residential properties are financially linked to the proposed development. The upper part of the turbine will be visible from the garden areas above the evergreen tree screen, and the turbine will be visible on the approach to the properties. Noise impacts for these properties have been assessed to be within the acceptable limits as set out in ETSU-R-97, and the impact on shadow flicker is also within limits. The effect on the living conditions of these properties is considered not to result in the properties becoming overwhelmingly unattractive or undesirable places in which to live. The next nearest residential properties on Moor Lane are located over 600m from the scheme where the

visual, noise and shadow flicker effects are not considered to be significant. Mitigation measures are proposed as a further safeguard.

30. The scheme will not result in any unacceptable impacts on the public highway during the construction/decommissioning or operational phases.
31. The benefits of the proposal are clear and further support the granting of planning permission, these include:
  - A renewable energy scheme which will contribute towards achieving the UK's statutory obligations for increasing renewable energy and reducing carbon emissions.
  - A positive contribution towards the decarbonisation and stability of the UK's energy supply.
  - The generation of electricity to supply up to 600 homes.
  - Continued financial support for the host farm.
32. These benefits are to be awarded significant weight in the overall planning balance as advised in the NPPF and EN-1 and EN-3.
33. The proposal will not result in a significant effect on the setting of the AONB, nor will it result in harm to the significance of the heritage assets in the vicinity of the site. Lincolnshire County Council had no objections on heritage grounds. HE did not raise concerns over the effect on the conservation area. The Council did not consider the effect on the significance of the relevant heritage assets as they are required to do. Nor is it clear whether the Council has calibrated the harm caused in terms of the NPPF; whether it is 'substantial' or 'less than substantial'.
34. In conclusion the proposed development will make a small but meaningful contribution to meeting the UK's statutory obligations for renewable energy generation whilst ensuring national energy security and the decarbonisation of the economy. It will do so in a way which respects the statutory duties in terms of the preservation and conservation of designated landscapes and heritage assets, and in a manner which avoids the occurrence of significant harm to other environmental receptors. Whilst some degree of harm will arise this will not be unusual or out of the ordinary for a scheme of this nature and, as explained in EN-3, is to be expected. Such harm will be temporary and entirely reversible and is, we contend substantially outweighed by the aforementioned benefits of the proposed development. The proposed development represents sustainable development and is in accordance with the objectives of the NPPF, EN-1 and EN-3 as a whole.

### **The Case for West Lindsey District Council**

*The main points are:*

35. The principle of a wind turbine is accepted and is supported. Its acceptability rests on a detailed consideration of the impacts.

### *Lincolnshire Wolds AONB and Landscape Impacts*

36. The introduction of a large vertical structure with rotating blades in relative close proximity to the Wolds will inevitably have an impact on views from and towards the AONB including from the Viking Way long distance footpath. This will be seriously detrimental to the setting of the Lincolnshire Wolds AONB. In having such an impact it would also be contrary to policy PP7 of the LWMP. The LWMP has been adopted by the Council and neighbouring Councils as well as the County Authority. This recognises the pressures for change within the AONB whilst maintaining the primary function of safeguarding its natural beauty.

### *Historic Environment*

37. The turbine would intrude upon and harm the setting of Caistor Conservation Area. The benefits in terms of renewable energy generation do not outweigh the harm to designated heritage assets.
38. The Caistor Conservation Area Appraisal (CAA) states that the rural character of the town is derived from its location on the hillside with views over the surrounding countryside. Views towards the conservation area enjoy the setting of the town following the line of the hillside and nestled against it, a distinctive roofscape of traditional terracotta. The presence of a wind turbine would therefore be a discordant and intrusive addition to this attractive and valued landscape and setting of the Caistor Conservation Area. The turbine will be included in views towards the town particularly from the north west. Moreover the movement of the turbine blades will intensify its unacceptable visual dominance and intrusion in the landscape.
39. Unacceptable harm to the setting of Caistor Conservation Area would result. The proposal conflicts with the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area as required by section 72 (1) of the LBCA and would be contrary to the guidance contained within the NPPF.
40. Paragraph 132 requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation and that significance can be harmed or lost by development in its setting. Harm should have a clear and convincing justification. Paragraph 134 goes on to state that where the development proposal will lead to less than substantial harm this harm should be weighed against the public benefit. Furthermore, paragraph 137 states that Local Planning Authorities should look for new development within a conservation area and within the setting of heritage assets to reveal or better enhance significance.
41. It is considered that this application does not make a convincing case that the development should happen in this particular location, therefore the harm is not 'necessary' to deliver public benefits. This application fails to comply with requirements of the NPPF in terms of sustainable development which states that 'to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system'. The failure to deliver an environmental role means that this development is inherently unsustainable.

42. Another indicator of the unacceptability of the proposals although not a reason for refusal are the additional comments from HE that the information submitted was not sufficient for them to conclude that there would be no impact on views of Pelham Pillar (particularly from the ride running north east from the pillar) and hence the setting and significance of Brocklesby Park registered park and garden (grade I), or on views of the tower of the church of St Peter and St Paul, Caistor from the south-east (for example from Whitegate Hill).
43. These are considered to be significant and demonstrably adverse impacts that would outweigh the benefits of the development in terms of the generation of renewable energy.

### Written Representations

44. In this section, where representations make similar points, they have not necessarily been included in this summary.
45. **Stephen Jack** of the Lincolnshire Countryside Alliance, on behalf of the AONB, advises that they welcome the additional viewpoint and visual assessment from a location within the AONB (near topside of Mansgate Quarry) sent as an additional submission. However as recently indicated, their overall concerns remain, that a wind turbine, at a height in excess of 100m to blade tip, will encroach upon the views and setting of the nationally AONB.
46. Whilst the development will be arguably of a local nature in the context of the overall size of the AONB, the impact upon the north-west escarpment is likely to be a significant one. He highlights that the recently adopted LWMP is supportive of sustainable development and energy generation that can minimise visual intrusion and indeed enhance the landscape character and special qualities of this nationally designated landscape. The north-west escarpment is one of four principle landscape character areas, as recognised within the LWMP. This development, with the introduction of a large vertical structure with rotating blades, will certainly have a detrimental impact upon the notable views from this area of the Wolds, including several vantage points from the popular Viking Way long distance footpath between Caistor and Clixby.
47. The applicant makes reference to the hedgerows and woodland cover that filter the development to varying degrees. It is however important to note that any such screening will be much reduced during the winter months due to the leaf drop from any deciduous trees and shrubs. Similarly future tree and hedgerow management, including thinning and hedge laying operations, can also quickly reduce any current screening benefits that may be evident.
48. **Mrs Fiona Lintin** of Caistor Equestrian Centre adjacent to Caistor Moor Farm points out that the residents of Caistor Moor Farm House are totally independent from owner/occupier Mr Lundy and Moor Farm or the Equestrian Centre. Caistor Equestrian Centre will have no benefit, financially or otherwise. The livery clients in particular object strongly to the positioning of the turbine and its construction. Regarding the wind turbine at Caistor Moor Farm, the landowner proposing the development has suggested that it is for the farm's financial security.
49. The appellant suggests that Caistor Equestrian Centre is within the boundaries and ownership of Caistor Moor Farm, but Mrs Lintin would like to clarify that Caistor Equestrian Centre is an independent business and opposed to the



- erection of wind turbines on the neighbouring farm. As owner of Caistor Equestrian Centre, she would like to point out the serious impact the construction of a wind turbine would have on her business. The Centre has extensive literature advertising safe hacking in the beautiful, unspoilt Lincolnshire countryside. She believes that hacking around the land and neighbouring farmland will be seriously compromised as a result of the horses' fear of unusual and moving objects that do not conform to a countryside environment.
50. She also believes that on site activity at Caistor Equestrian Centre would be seriously compromised by this unusual and moving object; some horses will be scared and therefore riding, competing and doing lessons in the outdoor arena will be restricted to the limited number of horses that are not frightened.
  51. There are several liverys threatening to leave the business as a result of the potential change in the amenities and safe facilities. She is also concerned about the potential effect of turbine noise. People will be less willing to bring their horses to shows if they are worried about their horse reacting to the unusual shape, size, movement and sound of the turbine.
  52. **Historic England** considers that the proposed wind turbine could affect the setting and significance of a number of designated heritage assets, including the church of St Peter and St Paul, Caistor (listed Grade I as being of outstanding architectural and historic interest), Caistor Roman town (scheduled monument), and possibly Brocklesby registered park and garden (Grade I) including Pelham pillar (listed Grade II).
  53. The church of St Peter and St Paul is a key landmark building and its prominent tower can be seen in views towards Caistor, particularly from higher ground to the south-east of the town. This prominence is deliberate and was meant to signify the importance of the church and Caistor itself. Views of the tower form an important part of the setting and significance of the church. The designed view of Pelham pillar along the ride extending to the north-east is an important part of the significance of Brocklesby registered park and garden. The proposed scheme also lies just outside the AONB which is an area of high historic interest.
  54. **Sir Edward Leigh MP** for Gainsborough, writes to record the views of the overwhelming majority of constituents who have expressed strong opposition to this proposal. Given its proximity to the Wolds, the visual impact upon Caistor, and the worries for the nearby riding school, he very much hopes it will be rejected.
  55. A number of **local people** write to record the fact that Caistor has over 70 listed buildings. They say the development, which would be the largest man-made structure for 15 miles, is not in keeping with the landscape and will spoil the reputation of the town and the work to promote it. They also express the view that users of the Viking Way, who are drawn to the area from many places, would find it inappropriate. Other concerns raised include the effect on wildlife including bats, noise pollution, highway safety, shadow flicker, TV reception and health risks.
  56. **David and Lesley Kendall** live in Moor Lane about 800m from the proposed turbine site and in addition to the visual and noise impact they expect at their own property, raise many concerns including that turbines will be visible for miles from towns and villages such as Somersby, Searby, Owmbly, Grasby, Nettleton

and Caistor itself. This will also affect a town community which is steeped in a rich and varied history. The culture and heritage of the area dates back to the Roman period which will ultimately be spoilt by this modern protruding structure. Moor Lane is a single track lane with culverts, unsuitable for the heavy components that will need to be delivered. They also draw attention to discrepancies in the noise impact assessment which they say is for a 500kw turbine instead of the proposed 800kw.

57. **Mr and Mrs Barney** of Moor Lane have similar concerns but also draw attention to the condition of the land and say the 'passing places' are on private land and are not classed as passing places. Overhanging trees and hedgerows encroach onto the limited area of grass verge. There is a small bridge over a culvert and it is unclear whether it or the lane will take the movement of heavy traffic. They have lived at the south end of Moor Lane for 47 years and from being an unadopted shale and dirt lane to being adopted when Cherry Valley duck farm huts were erected when only a skimmed tarmac surface was applied, there has never been a proper solid road structure. The sides of the lane have been patched up due to the increase of traffic, only to crumble away again leaving the lane in need of repair.
58. **Valerie Lawrence** lives on a new estate of houses on an old hospital site on the south side of North Kelsey Road, with a view across towards the turbine site. She objects because of the effect on her view of the countryside. Having recently moved to her house for the surrounding natural environment, she considers the proposed turbine would be an alien feature.
59. Councillor **Angela Lawrence** points out that there has been overwhelming opposition from the residents of the area and two public meetings. The development would overshadow and dominate the prospect from the residents of Moor Lane, North Kelsey Rd and the new estate on the old hospital site. The turbine would dominate the view across the valley from Caistor. It would also dominate the view looking towards Caistor.
60. The road leading to the proposed site is a very narrow, single track lane. Construction traffic would have difficulty in accessing the site and would cause significant disturbance and nuisance to residents. The traffic would also cause significant damage to the lane. The safety aspects of this project are a very serious consideration.
61. Other concerns include noise and disturbance; the impact of the constant, low level noise; the potential for serious health issues; the effect on listed buildings and Caistor conservation area; Views towards Caistor from the valley would be spoilt; nature conservation; bird mortality; scale and dominance; the impact on community and other services.
62. Caistor is the gateway to the AONB which was designated as such in the 1970s because of its unspoilt nature, rurality and mostly for its magnificent views. If this application goes ahead all of this will be called into question. If the views are tainted, which this will do, then there is a question mark over our AONB status. At a time of difficulty in providing employment in rural areas, tourism is an area that is growing. The County and the District are working very hard to grow the tourist industry in Lincolnshire.

63. **Caistor Civic Society** draw attention to the effect on visual amenity and tourism. Caistor has 'Walkers are welcome' status and the turbine would be prominent seen from the Viking Way and the AONB. The annual Wolds Walking Festival and Lincolnshire Heritage Open days attract many visitors.
64. Letters of support from local residents **Peter Sanderson** and **Malcolm Bedells** draw attention to the threat of climate change which indicates renewable energy schemes should be allowed unless there is significant risk of harm to the local environment or the local population. Mr Sanderson says that people quickly get used to the visual impact once turbines are erected. There are no other serious disadvantages to this installation. Mr Bedells says there is a need for this type of project if the country is to have a sustainable energy policy.
65. **The Marsh Windfarm Action Group** (MWAG) represents local communities who they say are becoming increasingly concerned about the extensive visual landscape character impacts of turbines on the highly valued long views to and from the AONB in the east and the west. MWAG note that there are extensive views across the open Ancholme valley from the A1084 particularly in the Grasby to Clixby down to Caistor areas. The tourist and recreational views obtained from the Cross Keys Public House at Grasby are absolutely stunning, with the renowned Lincoln Cathedral in marked prominence as a significant Lincolnshire and national and international land mark.
66. The wind turbines to north of the Cathedral at Normanby Hall are a distracting feature on the skyline, whilst some visitors may object to these they do not have the dominant substantial visual and landscape character impacts that the nearest Moor Lane Caistor turbine will have, which is likely to subjugate the prominence of the Church of Saint Peter and St Paul snuggled in the historic heart of Caistor.
67. MWAG has serious concerns that the photomontages accompanying the application are of an extremely poor standard. MWAG consider this is a material failure of this appellant's LVIA. Furthermore montage VP8, incorrectly identified as being on the Viking Way, is on the appellant's land and nowhere near the Viking Way. For information purposes the Viking Way proceeds further east through the centre of Caistor crossing the A1084 & the A46 towards Nettleton top and before climbing up into the Wolds AONB towards Normanby le Wold.
68. MWAG asserts in this submission, that as an almost seemingly 'benign' sequential incremental approval of wind farm schemes continues to impact on the 'visual character nature' of the AONB identified in its original designation, this will ultimately be undermined. Flowing from this there is serious and credible threat, that if the AONB is stripped of this key characteristic, the Lincolnshire Wolds statutory AONB designation will be eventually challenged, as this will be of little value.
69. **Rick Merrall** of Caistor says the proposed turbine is of considerable size and, although located outside the AONB, would dominate the landscape and be clearly visible from the many viewpoints within Caistor and its surroundings. Caistor is located on the western escarpment of the Wolds, overlooking the Vale of Ancholme towards Lincoln. Lincoln Cathedral can be seen from Caistor and the views are unspoiled by conspicuous man-made structures. A wind-turbine in such close proximity to the town, in conjunction with another turbine proposed for construction at nearby South Kelsey, will spoil the unique visual amenity for residents and visitors alike. Because of Caistor's location on the escarpment, the

close proximity of the wind turbine to the town would create a significant noise issue due to amplification and reverberation off the hillside, affecting all residents of the town and surrounding area. There are also numerous dwellings in a very close proximity to the proposed site and for them the noise would be pervasive.

### **Planning Conditions**

70. The Council suggested a number of conditions that it considers would be appropriate if the Secretary of State decided to allow the appeal. Further suggested conditions have been circulated to the main parties and the responses have been taken into account.
71. The wording of the suggested conditions is covered here without prejudice to my consideration of the issues. I have considered the suggested conditions in the light of planning guidance and paragraph 206 of the Framework. They have been adapted in accordance with the recommendations therein where appropriate, to ensure the wording is precise, necessary, relevant and enforceable; and if permission is granted, should be imposed for the reasons stated.
72. Condition 7 requires investigation and remedial measures if necessary to ensure that Moor Lane is not permanently damaged by construction traffic. Condition 25 allows a degree of micro-siting but no nearer to the closest residential properties or hedges which are likely to be used by bats for foraging.
73. Condition 20 requires an infra-red aviation light which would be necessary to avoid obvious light pollution in views from the AONB. Condition 28 is the standard condition from ETSU-R-97 limiting noise levels at the nearest uninvolved dwelling to 35 dB <sub>LA90 (10 mins)</sub>.

### **Appraisal**

*The numbers in brackets [] refer to the main paragraphs of relevance*

74. Following from the reasons for refusal, the main considerations that will be of interest to the Secretary of State are:
- Whether the proposed development would preserve or enhance the character or appearance of the Caistor Conservation Area;
  - The effect on the setting of listed buildings and other heritage assets;
  - The effect on the Lincolnshire Wolds AONB;
  - The effect on visual amenity; and
  - Whether the environmental and economic benefits of the scheme would be sufficient to outweigh any harm that might be caused.

### *Policy considerations*

75. The saved policies of the adopted LP are silent on renewable energy. There are no policies on where renewable energy provision might be located in West Lindsey.
76. STRAT 1 is the only policy referred to in the reasons for refusal which seeks to protect conservation areas, listed buildings and SAMS. It uses the words 'compromise' and 'safeguard' and acknowledges the need to ensure present

demands do not compromise the ability of future generations to meet their own needs. This recognises that development involves impact; by implication, this must include an element of balance. Its definition of sustainable development, taken from the 1987 United Nations General Assembly and repeated several times in the NPPF, is intrinsically a matter of balance. However the last paragraph of the justification seeks a net gain from development which should positively contribute to the enhancement of local distinctiveness and sense of place. In the case of wind energy, that is difficult to achieve, as explained in EN-1 and EN-3 of 2011.

77. This is not a case where the LP policy wording is completely inconsistent with up to date national policy. Policy NBE 9 does demonstrate an element of balance and is reasonably consistent with the NPPF section on renewable energy. One of the aims and objectives of the LP set out at paragraph 12 also says that *'In order to achieve the national sustainability objectives, it is essential that there is a balance between environmental, social and economic factors and that on-going development is sustainable to meet the needs of today's society whilst not harming the chances of future generations to meet their needs'*. However the overall approach is one which does not reflect or account for the unusual characteristics of wind energy projects, which will always have significant landscape and visual effects for a number of kilometres around a site. In this sense policy STRAT 1 is out of date.
78. It follows that paragraph 14 of the NPPF comes into play. This says that where the development plan is absent, silent or relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or specific policies in the NPPF indicate development should be restricted. Footnote 9 includes designated heritage assets in the list of specific policies that restrict development. Considered in the round, there is a restrictive policy context for proposals which harm heritage assets.

#### *The effect on the Caistor Conservation Area*

79. The latest guidance from HE, *The Setting of Heritage Assets* of March 2015 provides a list of factors that are useful in elucidating the implications of development for the significance of heritage assets under the general heading 'the form and appearance of the development' two examples of which are prominence, dominance, or conspicuousness; and competition with or distraction from the asset.
80. The Caistor Conservation Area comprises the central area around the Grade I listed St Peter and St Paul's Church and includes what is considered to be the original Roman settlement. Its historic interest and character centres around the medieval street pattern of narrow plots and the market square, which contain significant Georgian and Victorian buildings. A large area of the centre of Caistor is designated as a Scheduled Ancient Monument (SAM). The town's heritage significance is enhanced by its location on the hillside with views over the surrounding countryside; sheep farming played a major part in the town's prosperity.
81. The proposed turbine would be about 2.5 kilometres (km) from the centre of Caistor, but its visual impact would be significant because the centre of Caistor is

sited on the side of a hill. Views of countryside including the appeal site are possible from streets within the town, particularly near the church and from the outskirts of the conservation area. However the contribution of the rural setting to the overall significance of the conservation area itself, as experienced in the intimate and narrow streets, is very limited. The effect on its setting would be more marked; from surrounding high land, especially in a range extending from east to east south east of the town, the valley below forms a 'bowl' setting for the red roofed conservation area with the church at its centre. The turbine would be a conspicuous and distracting element seen from this direction which would diminish the contribution that the rural setting makes to its significance.

Recognising that the church would be the most obvious feature of the town, this would be particularly noticeable in the evening from near the B1225 when the blades would be stark in silhouette against a bright flat landscape with no other vertical features except the church tower.

82. From other directions generally to the north and south, such as from Nettleton Hill, modern development including industrial and agricultural buildings are much more prominent in the landscape and the conservation area is not seen in the same context as the turbine. Nevertheless the impact from an easterly direction is sufficient to lead me to conclude that the turbine would appreciably harm the setting and therefore the significance of the conservation area, conflicting with the aims of policy STRAT1 of the LP. The harm would be less than substantial in terms of the NPPF which indicates it should be considered in the balance with the public benefits of the proposal. [33,38]

#### *Other heritage assets*

83. The tower of St Peter and St Paul dominates Caistor at the centre of the conservation area. For the reasons outlined above, notwithstanding the distance involved, in views from an easterly direction, its historic and architectural significance as the focus of the community would be detrimentally affected because of the competing vertical presence of the turbine within its setting. [52,53,66]
84. The significance of the Roman SAM derives from remains of the Roman wall around the town and the street layout. 'Caistor' is a derivation of the Roman 'Castra' meaning fortified camp. The turbine would not affect appreciation of the SAM to any significant extent. [27,52]
85. Brocklesby Registered Park and Garden (RPG) occupies an extensive area north east of Caistor including wooded areas that would be mostly out of sight of the turbine. Where these extend to high ground at Cabourne High Wood near the A1173, about 3.5 km from the turbine, the turning blades would be just visible<sup>6</sup> from the ground and rides, but they would be insufficiently close to seriously impact on appreciation of the woods or the heritage value of the Brocklesby RPG. Pelhams Pillar is a mid 19<sup>th</sup> century viewing tower built at this high point to enable the Earls of Yarborough to view the estate. The turbine would certainly be visible from the about 39m high viewing platform at the top, through trees, but this would be in conjunction with much other development including industrial sheds and housing estates. At the proposed distance it would not significantly affect the tower's heritage significance or that of the RPG. Nor would the heritage

<sup>6</sup> See ZTV at N235-GR-LVIA1-009. The RPG is shown on N235-GR-LVIA1-007

significance of Pelham's Pillar in the landscape on the ridge be compromised.[42,53]

86. No other heritage assets brought to my attention would be significantly affected by the proposed development.

*The effect on the AONB and visual amenity*

87. Drawing ref N235-GR-LVIA1-007 in the appellant's Landscape and Visual Impact Assessment (LVIA) indicates the location of the AONB to the immediate south east of Caistor. To put this into context, drawing N235-GR-LVIA1-004 shows high ground to the north of the town, which combines with high ground in the AONB to provide the setting for Caistor and to illustrate the location of the proposed turbine in a shallow bowl. All the high ground falls within National Landscape Character Area *Lincolnshire Wolds* and West Lindsey's Regional Character Area (RCA) *D The Wolds*.
88. The low hills of the AONB rise in the locality to about 139m above ordnance datum (AOD) at Cabourne and 142m at Cabourne Vale. Further to the south, the land rises gently to about 168m at the Claxby radar station. Nettleton Top, the most prominent steep escarpment south of Caistor rises to 114m. The tip of the blades would be around 135m AOD. It follows that the hub and blades, and from time to time, the tower would be visible from many west facing parts of the AONB in the immediate locality including Nettleton Top, the Viking Way and Whitegate Hill; and this is borne out by the ZTVs<sup>7</sup>. Their prominence would be emphasised by the relative lack of vegetative cover on the higher parts of the Wolds, which is an intrinsic characteristic of the higher ground.
89. As such, the turbine would be a significant distraction from the natural beauty of the AONB and would conflict with the aim of conserving its landscape and scenic beauty, a matter that the NPPF says should be given great weight. Moreover, the turbine would be a dominant feature in long views of the Wolds escarpment from west of the turbine location. From here the undulating high ground on either side of Caistor is a strong identifying characteristic which gives Caistor and its church tower an important role as an entry point to the AONB.
90. The turbine would be located in the flat Lincolnshire Clay Vale RCA which would be significantly affected within a radius of about 2.5km. However the immediate locality is unremarkable and detrimentally affected by agricultural activity including chicken and duck breeding sheds. More importantly, views of Lincoln Cathedral and of the extensive Wolds Scarp (the AONB) are characteristics of this RCA. Views of Lincoln Cathedral would only be affected in certain precise locations and I do not consider the turbine would seriously impact on these. However the scarp is an important landscape feature and the turbine would be a high, prominent and distracting object that would interfere with appreciation of its landscape quality.
91. I conclude that the sensitivity of the landscape is increased nearer to the scarp of the AONB and the northern hills which are an attractive feature of the chosen location. Appreciation of the natural beauty of the AONB as seen from North Kelsey and areas west of the site would be seriously affected by the intervening

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<sup>7</sup> N235-GR-LVIA1-009 and N235-GR-LVIA1-010

height and movement of the turbine. Seen from the AONB itself, the turbine would often be seen in the context of industry and housing but from the Viking Way it would be a persistent and discordant feature. It would be within 2.5km of the National Trail for more than 6 km of its length and in the time taken to walk that distance, would be a frequently distracting and alien element against a rural backdrop of long views. There would be views from residential and touring parks on Brigg Road<sup>8</sup> at a distance of around 1.5km which would diminish the character of the rural surroundings for visitors. The sensitivity of the local landscape is greater than that recorded in the appellant's LVIA and the magnitude of effect is locally greater, leading to a more than moderate significance of effect. Overall, there is a conflict with the aims of LP policy NBE 9, policy PP7 of the LWMP and the objectives of the NPPF.[27-9,36,46,63,68-9]

### *Other matters*

#### *Residential amenity*

92. At the site visit, the opportunity was taken to visit 3 residential properties. At Redgates on Moor Lane, the turbine would be about 800m away. Whilst visibility would be rather restrained by vegetation on the ground floor and at the outdoor patio area, the upstairs bedroom where the current occupier occasionally needs to stay because of difficulty using the stairs, would have a view directly to the site from the bedhead. This would represent a major change to the amenity of the occupiers who currently have a pleasant rural outlook. The moving blades of the turbine would tend to draw the eye. This harm needs to be taken into account, but overall, the distance to the turbine and the availability of other unaffected views would mean that the outlook of the occupiers would not be unacceptably affected.[29,56]
93. At Teesdale, a bungalow at the junction of Moor Lane and North Kelsey Road, the turbine would be just over 1km away at an acute angle to the main elevation. Views would be accordingly less affected than at Redgates, although the turbine would be a distracting feature seen from the outdoor deck. [57]
94. From 2 Tiberius Walk, a modern terraced house on a new estate on North Kelsey Road, the turbine would be about 1km to the north west across the road. Although there would be a change in outlook from the living area and upstairs bedroom, again due to distance and orientation, the effect would not be unacceptable.[58]

### *Noise*

95. I have taken into account the objections of many local occupiers on grounds of noise and health impacts, but predicted noise emissions for the candidate E48 gearless 800kW<sup>9</sup> turbine would be no more than 36 dB<sub>LA90 (10 mins)</sub> at a wind speed of 4-10 metres/second at the nearest noise sensitive receptor approximately 380m from the turbine, which the appellant has confirmed by email of 19 November 2015 is occupied by a financially involved person or persons who may be expected to tolerate a higher level of noise. The

<sup>8</sup> It was unclear at the site visit in November how intensively these are used

<sup>9</sup> Appendix 3 of ENS Solutions Ltd Report contains the noise emissions data for a 800kW turbine. My conclusions are based on the assumption that these are the figures used in the noise assessment although the application is for a 500kW machine (ie 101 dB(A) at 10m/sec at 10 m height).



Government's preferred method of assessing noise from wind turbines<sup>10</sup> is ETSU-R-97 and this suggests that a lower daytime limit of 35<sub>LA90 (10 mins)</sub> would be acceptable. A difference of less than 3 dB is accepted to be unnoticeable in practice. No background levels have been recorded, but a condition ensuring that an upper daytime limit of 35<sub>LA90 (10 mins)</sub> would be met at an uninvolvement property would provide sufficient assurance that noise levels would be acceptable in this case.[56,61]

96. I have taken into account all the other matters raised. No firm evidence has been provided that any wind turbine in the UK has led to unacceptable health effects. The potential problems on Moor Lane can be addressed by a suitable condition. No evidence has been provided that shows that horses at the nearby equestrian centre would be unacceptably affected at a distance of 400m; or that their ability to utilise the countryside for recreation would be seriously curtailed.[30,49,50,54]

### **Overall balance and conclusions**

97. No unacceptable cumulative effects have been identified in the assessment process. The impact on aviation interests that may arise have been agreed to be covered by conditions<sup>11</sup>. Concerns relating to shadow flicker and TV reception can be addressed by conditions. [27]
98. The production of electricity, sufficient to provide power for up to 600 households, is a very significant factor in favour, along with the reduction in CO<sub>2</sub> emissions that would result. Against that, there would be a significant adverse impact on landscape character and visual amenity in views from and towards the AONB and for users of the Viking Way; and a degree of harm (less than substantial) to the setting of Caistor Conservation Area and the Grade I listed building at St Peter and St Paul's. The limited 25 year life of a renewable energy scheme must be considered but the adverse impact would last for more than a generation in a sensitive landscape area. [28,31,34,43]
99. The benefits are significantly and demonstrably outweighed by the disadvantages. Moreover, importantly, the Council and the overwhelming majority of local people who have made their opinion known, are not satisfied that the planning impacts have been fully addressed. Following the advice in WME, it cannot therefore be assumed that it has their backing. The proposal would not accord with the relevant aims of LP policies STRAT 1 and NBE 9; policy PP7 of the LWMP, or the corresponding up to date objectives of the Framework and planning guidance.

### **Recommendation**

100. I recommend that the appeal should not be allowed to succeed. Should the Secretary of State disagree, then I recommend that the conditions set out in the Annex to this Report should be attached to any permission.

*Paul Jackson*

INSPECTOR

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<sup>10</sup> ETSU-R-97: The Assessment and Rating of Noise from Wind Farms

<sup>11</sup> Conditions 18-21

## Annex

### Suggested conditions

No.	Condition	Notes
	<b>Time Limits and Site Restoration</b>	
1	The development hereby permitted shall be commenced before the expiration of three years from the date of this permission. Written confirmation of the commencement of development shall be provided to the local planning authority no later than 14 days after the event.	
	<b>Reason:</b> To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.	
2	This permission shall expire no later than 25 years from the date when electricity is first exported from the wind turbine ("First Export Date"). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after the event.	
	<b>Reason:</b> In recognition of the expected lifespan of the wind turbine and in the interests of safety and amenity once the plant is redundant.	
3	Not later than 12 months before the date of expiry of this permission, a decommissioning and site restoration scheme shall be submitted for the written approval of the local planning authority. The scheme shall make provision for the removal of the wind turbine, removal of the turbine foundation to a depth of at least 1 metre below the finished ground level; and removal of the associated above ground works approved under this permission including the substation building, and shall also provide for the removal of the wind farm access track. The scheme shall include details of the management and timing of any works, a traffic management plan to address likely traffic impact issues during the decommissioning period, location of material laydown areas, and an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats and details of site restoration measures. The approved scheme shall be fully implemented within 24 months of the expiry of this permission. The approved scheme shall be fully implemented within 12 months of the expiry of the 25 year period, or from the date of local planning authority approval, whichever is the later.	
	<b>Reason:</b> To ensure the development is decommissioned and the site restored at the expiry of the permission.	
4	If the wind turbine generator hereby permitted ceases to export electricity for a continuous period of 9 months then, unless otherwise agreed in writing with the local planning authority, a scheme for its repair or removal shall be submitted to the Local Planning Authority within 3 months of the end of that 9 month period. The scheme shall	

	include either a programme of remedial works where repairs to the turbine are required, or a programme for removal of the turbine and associated above ground works approved under this permission and the removal of the turbine foundation to a depth of at least 1 metre below finished ground level and for site restoration measures following the removal of the relevant turbine. The scheme shall thereafter be implemented in accordance with the approved details and timetable.	
	<b>Reason:</b> To ensure appropriate provision is made for repair or decommissioning of the turbine.	
	<b>Construction Method Statement</b>	
5	<p>Development shall not commence unless and until a Construction Method Statement ("CMS") has been submitted to and approved in writing by the local planning authority. Thereafter the construction of the development shall only be carried out in accordance with the approved statement. The CMS shall include:</p> <ul style="list-style-type: none"> <li>a) Details of the temporary site compound including temporary structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;</li> <li>b) Details of the proposed storage of materials and disposal of surplus materials;</li> <li>c) Dust management;</li> <li>d) Pollution control: protection of the water environment, bunding of fuel storage areas, surface water drainage, sewage disposal and discharge of foul drainage;</li> <li>e) Temporary site illumination during the construction period including proposed lighting levels together with the specification of any lighting;</li> <li>f) Details of the phasing of construction works;</li> <li>g) Details of surface treatments and the construction of all hard surfaces and tracks;</li> <li>h) Details of emergency procedures and pollution response plans;</li> <li>i) Siting and details of wheel washing facilities;</li> <li>j) Cleaning of site entrances, site tracks and the adjacent public highway and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the highway;</li> <li>k) A site environmental management plan to include details of measures to be taken during the construction period to protect wildlife and habitats;</li> <li>l) Areas on site designated for the storage, loading, off-loading, parking and manoeuvring of heavy duty plant equipment and vehicles;</li> <li>m) Details and a timetable for post construction restoration/reinstatement of the temporary working areas and the construction compound;</li> <li>n) Working practices for protecting nearby residential dwellings, including measures to control noise and vibration arising from on-site activities shall be adopted as set out in British Standard 5228 Part 1: 2009; and</li> </ul>	

	o) Details of construction works, including HGV trips to and from the site, associated with the pouring of concrete to form the wind turbine base.	
	<b>Reason:</b> To ensure a satisfactory level of environmental protection and to minimise disturbance to local residents during the construction process.	
	<b>Construction Traffic Management Plan and highway safety</b>	
6	Development shall not commence unless and until a Construction Traffic Management Plan ("CTMP") has been submitted to and approved in writing by the local planning authority. The CTMP shall include proposals for the routing of construction traffic, scheduling and timing of movements, details of escorts for abnormal loads, temporary warning signs, arrangements for any necessary temporary speed limits, temporary removal and replacement of highway infrastructure/street furniture and the reinstatement of any signs, verges or other items displaced by construction traffic.	
	<b>Reason:</b> In the interests of highway safety.	
7	Prior to the commencement of any construction works, access tracks and ancillary infrastructure approved pursuant to this permission, a scheme setting out the details of the protection and improvements to be made to Moor Lane and its verges shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of any culvert reinforcement, improved surfacing and verge protection to be implemented at the site. The development shall not be commenced until the scheme has been completed as approved.	
	<b>Reason:</b> In the interests of safety of the users of the public highway and the safety of the users of the site.	
	<b>Construction Hours</b>	
8	Construction work shall only take place between the hours of 0700 – 1900 hours Monday to Friday inclusive and 0800 – 1300 hours on Saturdays with no construction work on Sundays or Public Holidays. Works outside these hours shall only be carried out (a) with the prior written approval of the local planning authority, or (b) in the case of an emergency, provided that the Local Planning Authority is notified by telephone and writing as soon as reasonably practicable (and in any event within 48 hours) following the emergency first being identified, such notification to include both details of the emergency and any works carried out and/or proposed to be carried out, or (c) dust suppression.	
	<b>Reason:</b> In the interests of amenity to restrict noise impact and the protection of the local environment.	
9	Development shall not commence unless and until contact details (including an out of hours telephone number) of an appointed person at the developer undertaking the construction of the development	

	granted pursuant to this planning permission have been submitted to the local planning authority.	
	<b>Reason:</b> In the interests of minimising disturbance to local residents during the construction process.	
	<b>Delivery Hours</b>	
10	The delivery of any construction materials or equipment for the construction of the development, other than concrete material for turbine foundations and turbine blades, nacelles and towers, shall be restricted to the hours of 0700 – 1900 on Monday to Friday inclusive and 0800 – 1300 hours on Saturdays. Exceptions for deliveries outside these hours may be carried out with the prior written approval of the local planning authority.	
	<b>Reason:</b> In the interests of minimising disturbance to local residents during the construction process.	
	<b>Appearance</b>	
11	The overall height of the wind turbine shall not exceed 102m to the tip of the blades when the turbine is in the vertical position and 75m to the hub as measured from ground levels immediately adjacent to the wind turbine base.	
	<b>Reason:</b> In the interests of the character and appearance of the area.	
12	Prior to the erection of the wind turbine hereby approved, details of the colour and finish of the tower, nacelle and blades, shall be submitted to and approved in writing by the local planning authority. No name, sign or logo shall be displayed on the external surfaces of the turbine other than those required to meet health and safety requirements. The approved colour and finish of the wind turbine shall not be changed without the prior consent in writing of the local planning authority. The development shall be carried out in accordance with the approved details.	
	<b>Reason:</b> In the interests of the character and appearance of the area.	
13	<p>The turbine hereby approved not carry any form of external illumination, and there shall be no permanent illumination on the site other than:</p> <p>a) lighting required for the safety of aircraft in accordance with condition 20;</p> <p>b) a movement sensor-operated external door light for the electricity substation;</p> <p>c) during the construction period as agreed in connection with condition no. 5(e) above; and</p>	

	d) lighting required for maintenance or emergencies.	
	<b>Reason:</b> In the interests of the character and appearance of the area.	
14	Prior to commencement of the construction of the substation building, details of the design and the external appearance, dimensions and materials for the building and any associated compound or parking area and details of surface and foul water drainage from the substation building shall be submitted to and approved in writing by the local planning authority. The development of the substation and control building and any associated compound or parking area shall be carried out in accordance with the approved details.	
	<b>Reason:</b> In the interests of the character and appearance of the area.	
15	All electrical cabling between the turbine, the substation and the local grid connection shall be installed underground.	
	<b>Reason:</b> In order to ensure a satisfactory appearance in the landscape.	
	<b>Ecology</b>	
16	Development shall not commence unless and until a scheme providing for checking surveys of breeding birds (including the identification of any nests on the site including hedges to be removed) has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.	
	<b>Reason:</b> In the interests of nature conservation.	
17	Development shall not commence unless and until a pre-commencement survey of badger activity has been undertaken as recommended in the Ecological Appraisal of January 2014.	
	<b>Reason:</b> In order to make appropriate provision for badger habitat within the approved development and to ensure that species are protected having regard to the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) and The Conservation of Habitats and Species Regulations 2010.	
	<b>Aviation Safeguarding</b>	
18	Development shall not commence unless and until written confirmation has been provided to the local planning authority, the Ministry of Defence (MOD) and Civil Aviation Authority (CAA) of the proposed date of commencement of the development and of the erection of the wind turbine; and the maximum extended height of any construction equipment to be used on site.	
	<b>Reason:</b> In the interests of aviation safeguarding.	

19	<p>No later than 14 days after the First Export Date the developer shall inform the local planning authority, the MoD and the CAA in writing of:</p> <p>a) the date of completion of construction;  b) the height above ground level of the permanent structure; and  c) the position of the turbine in latitude and longitude.</p>	
	<b>Reason:</b> In the interests of aviation safety	
20	<p>The turbine hereby approved shall have installed infrared warning lighting with an optimised flash pattern of 60 flashes per minute of 200ms to 500ms duration at the highest practicable point. The turbine will be erected with this lighting installed and the lighting will remain operational throughout the lifetime of the development.</p>	
	<b>Reason:</b> In the interests of aviation safeguarding and in accordance with the advice of the Ministry of Defence.	
21	<p>No development shall commence unless and until an Air Traffic Control Radar Mitigation Scheme to address the impact of the wind farm upon air safety has been submitted to and approved in writing by the local planning authority. The Air Traffic Control Radar Mitigation Scheme is a scheme designed to mitigate the impact of the development upon the operation of the Primary Surveillance Radar at RAF Waddington ("the Radar") and the air traffic control operations of the Ministry of Defence (MOD) which is reliant upon the Radar. The Air Traffic Control Radar Mitigation Scheme shall set out the appropriate measures to be implemented to mitigate the impact of the development on the Radar and shall be in place for the operational life of the development provided the Radar remains in operation.</p> <p>The turbine hereby approved shall not become operational unless and until all those measures required by the approved Air Traffic Control Radar Mitigation Scheme have been implemented and the local planning authority has confirmed this in writing. The development shall thereafter be operated fully in accordance with the approved Air Traffic Control Radar Mitigation Scheme.</p>	
	<b>Reason:</b> To mitigate the impact of the development on the Primary Surveillance Radar at RAF Waddington and associated air traffic management operations.	
	<b>Archaeology</b>	
22	<p>No development shall commence unless and until a written scheme of archaeological investigation and mitigation, to include provision for local community involvement, has been submitted to and approved in writing by the local planning authority. The scheme shall be</p>	

	implemented as approved.	
	<b>Reason:</b> In order to protect and/or record any features of archaeological importance.	
	<b>Telecommunications</b>	
23	Prior to the First Export Date a scheme providing for the investigation and alleviation of any electro-magnetic interference to any television signal or wireless radio signal caused by the operation of the wind turbine shall be submitted to and agreed in writing by the local planning authority. The scheme shall provide for the investigation by a qualified engineer, within a set timetable of any complaint of interference with television reception or wireless radio signal at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C2, C3 and C4 of the Use Classes Order) which existed or had planning permission at the time permission was granted, where such complaint is notified to the developer by the local planning authority within 12 months of the First Export Date. Where impairment is determined to be attributable to the wind turbine hereby approved, mitigation works shall be carried out in accordance with a scheme which has first been agreed in writing by the local planning authority.	
	<b>Reason:</b> To address any issues relating to television interference.	
	<b>Shadow Flicker</b>	
24	Prior to the First Export Date a written scheme shall be submitted to and approved in writing by the local planning authority setting out a protocol for the assessment of shadow flicker in the event of any complaint to the local planning authority from the owner or occupier of any building which lawfully exists or had planning permission at the date of this permission. The written scheme shall include remedial measures to alleviate any shadow flicker attributable to the development and a timetable for its implementation. Operation of the turbine shall only take place in accordance with the approved protocol, subject to any variations approved in writing by the local planning authority.	
	<b>Reason:</b> In the interests of amenity for nearby residents.	
	<b>Micro-siting –</b>	
25	Notwithstanding the terms of this condition the turbine and other infrastructure, including the access track hereby permitted may be micro-sited within 30 metres of the position shown on drawing N235-GR-PA1-002B providing it is no closer to residential properties to the south and east or the western or southern boundary. A plan showing the final position of the turbine and track established on the site shall be submitted to the local planning authority within one month of the First Export Date.	
	<b>Reason:</b> To enable necessary minor adjustments to the position of the	



	wind turbine and access track to allow for site-specific conditions.	
	<b>Hydrology</b>	
26	If, during construction, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) within 50 metres of the identified contamination shall be carried out until a remediation strategy including a programme has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved in accordance with the approved timetable.	
	<b>Reason:</b> To prevent potential migration of contaminants to underlying groundwater.	
27	The development hereby permitted shall be carried out in accordance with the approved plans: N235-GR-PA1-002B Site Layout N235-GR-PA1-003A Turbine elevation N235-GR-PA1-004A Construction cross section N235-GR-PA1-005A Sub station elevations	
	<b>Reason:</b> For the avoidance of doubt and in the interests of proper planning.	
28	<b>Operational Noise</b>	
	<ol style="list-style-type: none"> <li>1) The rating level of noise from the wind turbine (including the application of any tonal penalty) shall not exceed 35 dB<sub>LA90 (10 mins)</sub> in wind speeds up to 10 metres per second, as measured at the boundary of any non-financially involved dwelling which lawfully existed or had planning permission at the date of this permission and shall not exceed 45dB<sub>LA90 (10 mins)</sub> in wind speeds up to 10 metres per second, as measured at the boundary of any financially involved dwelling owned by the landowner of the site on which the turbine is sited. Wind speeds described shall be derived from wind speeds measured at the turbine, standardised to a height of 10 metres. Compliance with this condition shall be determined in accordance with ETSU-R-97 and recognised good practice.</li> <li>2) Within 14 days from the receipt of a written request from the local planning authority (following a complaint to the local planning authority from the occupant of a dwelling which lawfully existed or had planning permission at the date of this permission), the wind farm operator shall, at the wind farm operator's expense, employ an independent noise consultant approved by the local planning authority to assess the level of noise emissions from the wind farm at the complainant's property.</li> <li>3) The independent noise consultant shall follow procedures to</li> </ol>	

	<p>be submitted to, and approved in writing by, the local planning authority prior to the commencement of the consultant's investigations. The wind farm operator shall provide to the local planning authority the independent consultant's assessment and conclusions regarding the noise complaint, including all calculations, audio recordings and the raw data upon which those assessments and conclusions are based. Such information shall be provided within 2 months of the date of the written request of the local planning authority.</p> <p>In the event that the results of the above measurements indicate that the specified noise limits have been exceeded at any dwelling then, within 21 days of notification in writing of this by the local planning authority, the operator shall submit in writing to the local planning authority:</p> <ul style="list-style-type: none"> <li>i. a scheme of noise control measures to achieve compliance with agreed noise levels;</li> <li>ii. a timetable for implementation of the noise control measures; and</li> <li>iii. a programme of monitoring to demonstrate the effectiveness of the noise control measures.</li> </ul> <p>The noise control measures shall be implemented and the monitoring undertaken in accordance with the scheme and timetable agreed in writing by the local planning authority.</p>	
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## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.